



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Suit 92 of 2003

NATIONAL BANK OF KENYA LIMITED PLAINTIFF

VERSUS

SYNTAX PRINTERS LIMITED 1ST DEFENDANT

PAUL KIPKURUI CHEMWENO 2ND DEFENDANT

JOHN CHEMARINGO 3RD DEFENDANT

RULING

National Bank of Kenya Limited (hereinafter called “the Bank”) filed this suit against Syntax Printers Ltd, Paul Kipkurui Chemweno and John Chemaringo who I shall refer to as the 1st, 2nd and 3rd defendants respectively, on 8/10/2003.

Though the 3rd defendant entered appearance and filed his defence on 7/1/2004, his co-defendants did not enter appearance neither did they file their defences.

The bank thereafter moved to have the 3rd defendant’s defence struck out, and prayed for judgment to be entered against him. The application was however not heard as the court found out that neither the 1st nor the 2nd defendants had been served with the plaint and summons to enter appearance and it declined to proceed with the application on 3/6/2004.

The bank is now back to court in an application in which it seeks to have the validity of summons extended for service upon the 2nd defendant. It bases its application on the grounds that its efforts to serve the same upon the 2nd defendant have proved futile. As expected, this is an exparte application.

The issue that arises in this application, and which I asked Mr. Obiero to consider seriously is whether there are “summons” whose validity can be extended, and in the circumstances whether this application can lie. He was of the view that the court has the discretion to extend the summons to enable the bank serve the 2nd defendant, and not to be deterred, counsel urged the court to find that this application was meritorious and he urged me to grant him the orders which he seeks. He relied on several cases in support of

As stated earlier, this suit was filed on 8/10/2003. It is evident that the summons against the three to enter appearance in the matter, were issued on 15/10/2003.

As stated earlier Mr. Obiero relied on several cases namely, Kenya Industrial Estates Limited vs. Ogana & another [2004] 1 EA 96, which unfortunately is self defeating as in dismissing the application for extension of summons the Hon. Kasango J. held that the summons in the matter had expired and were incapable of being extended. He also relied on Vinos v. Marks and Spencer plc [2001] 3 All ER 784, Lewis and another vs. Wolkin Properties Ltd [1978] 1 All ER 426 and finally on Boocock v. Hilton International Company [1993] 4 All ER 19. Though the three last cases deal exhaustively with the issues pertaining to summons, none of them support his contention that a summons which has already expired can be extended.

This application has been brought under inter alia Order V rule 1 of the Civil Procedure Rules which stipulates that:

1. (1) *A summons (other than a concurrent summons) shall be valid in the first instance for twelve months beginning with the date of its issue and a concurrent summons shall be valid in the first instance for the period of validity of the original summons which unexpired at the date of issue of the concurrent summons.*

(2) *Where a summons has not been served on a defendant the court may extend the validity of the summons from time to time if satisfied it is just to do so.*

(3) *Where the validity of a summons has been extended under subrule (2), before it may be served it shall be marked with an official stamp showing the period for which its validity has been extended.*

(4) *Where the validity of a summons is extended, the order shall operate in relation to any other summons (whether original or concurrent) issued in the same sum which has not been served so as to extend its validity until the period specified in the order.*

(5) *Application for an order under subrule (2) shall be made by filing an affidavit setting out the attempts made at service and their result, and the order may be made without the advocate or plaintiff in person being heard.*

(6) *As many attempts to serve the summons as are necessary may be made during the period of validity of the summons.*

(7) *Where no application has been made under subrule (2) the court may without notice dismiss the suit at the expiry of twenty-four months from the issue of the original summons.*

The guidelines in this country are very well laid down in the aforementioned rule and in my mind, our legal provisions is very clear in that unless summons are not renewed within the first twelve months, they expire. A party who does not seek to have the validity of his summons extended within the first twelve months does so at his peril, and it is my humble opinion, no court would have the discretion to extend what is no longer alive.

It is for the above reasons that I am unable to grant the orders which are being sought and I do in the circumstances dismiss this application with costs.

Dated and delivered at Eldoret this 13th day of June 2006.

JEANNE GACHECHE

Judge

Delivered in the presence of:

No appearance for the applicant